

RICHARD P. SMOOT

IBLA 77-474, 78-353

Decided January 8, 1979

Consolidated appeals from decisions of the Utah State Office, Bureau of Land Management, advising oil and gas lessee that lease U-3398 had expired and that no extension thereof was authorized (IBLA 77-474), and of the Director, Geological Survey, GS-96-O&G, affirming the decision of the District Engineer, Salt Lake City, Utah, denying lessee's application for permit to deepen a well on the lease site (IBLA 78-353).

Affirmed.

1. Oil and Gas Leases: Drilling—Oil and Gas Leases: Extensions

Nothing in the regulations requires an oil and gas lessee to request approval of a drilling plan from the Geological Survey more than 30 days in advance of the expiration of his lease. The regulations contemplate both a lessee's giving notice of intention to begin work and the district engineer's giving permission to proceed orally in cases of emergency.

2. Oil and Gas Leases: Bonds—Oil and Gas Leases: Drilling—Oil and Gas Leases: Extensions

An oil and gas lessee is required to post bond before he may initiate drilling operations on his lease. Where it is noted in a decision appealed from that neither the lessee nor his operator have posted bond, and the lessee does not controvert this fact on appeal, it is properly found that there was no bond coverage.

3. Oil and Gas Leases: Bonds—Oil and Gas Leases: Drilling—Oil and Gas Leases: Extensions

Where a lessee is required by law to post bond before commencing drilling and fails to do so, any drilling operations actually undertaken by him do not constitute "diligent prosecution" of "actual drilling operations" in good faith under 43 CFR 3107.2-3, and he is therefore not entitled to an extension of his lease.

4. Accounts: Payments—Oil and Gas Leases: Rentals— Payments: Generally—Waiver

BLM does not waive its right to declare a lease expired by cashing an advance annual rental check and placing funds in an unearned account.

APPEARANCES: Leonard J. Lewis, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Richard P. Smoot has appealed from two decisions, one by the Director, Geological Survey (GS), GS-96-O&G, affirming rejection of an application for a permit to deepen an oil well, and another by the Utah State Office, Bureau of Land Management (BLM), notifying Smoot that oil and gas lease U-3398 had not been extended as there was no diligent prosecution of drilling operations on the expiration date of the lease, as required by 43 CFR 3107.2-3. We have consolidated these appeals for decision, as they are interrelated.

On June 29, 1967, BLM issued oil and gas lease U-3398 to Richard P. Smoot, effective July 1, 1967, for a period of 10 years, so that the expiration date of the lease was June 30, 1977. This lease contained lands which were formerly within another oil and gas lease, U-06602, on which the Rosenblatt Federal Well No. 1 was drilled in 1964. This well was drilled to a depth of 2,402 feet, but was plugged and abandoned in June 1964. Lease U-06602 terminated subsequently, and the lands contained therein were put up for non-competitive leasing in 1967. Smoot won the rights thereto, including the Rosenblatt Federal Well No. 1, in the simultaneous drawing in June 1967.

On June 6, 1977, Denbe Investment Company (Denbe), by and through Donald Rosenblatt, vice president and partner, filed an application for a permit to deepen the Rosenblatt Federal Well No. 1 with the District Engineer (DE), GS, Salt Lake City, Utah.

Although no official notice to this effect was filed, it appears that Smoot designated Denbe as the operator on this lease. GS was aware of this designation, as Smoot hand delivered Denbe's application to the DE. The DE was on annual leave on June 6, 1977, and, on his return on June 13, 1977, he requested the records on lease U-3398, which he received on June 16, 1977. On June 17, 1977, he mailed the application, along with a surface use plan, to the Moab District Office, BLM, so that a joint inspection of the site could be arranged. On June 24, 1977, a BLM technician contacted Rosenblatt, and they agreed that this inspection should take place on July 6, 1977. On June 27, 1977, Smoot submitted advance rental on the lease for an eleventh year with the BLM State Office. BLM subsequently processed this check.

By letter dated June 30, 1977, the DE notified Denbe, Smoot's operator, that he was unable to process its application for a permit to deepen the Rosenblatt Federal Well No. 1 on lease U-3398, prior to the June 30, 1977, the expiration date of the lease. The DE explained that the time available was inadequate to accomplish the approval and returned the application as "not approved."

On July 1, 1977, Smoot called the Assistant District Engineer (ADE) to tell him that he had a small drilling rig on the site and was drilling there. During this conversation, the ADE notified Smoot that his application to drill had not been approved by the DE.

Also on July 1, 1977 (the day after expiration of the initial 10-year term of the lease), an onsite inspection was made by a GS technician from Vernal, Utah. This inspection revealed that there was no equipment on the lease site, but that there were signs of recent activity there.

On July 12, 1977, the DE sent a memorandum to BLM concerning Lease 3398. In this memorandum, the DE noted that "NTL-6" ^{1/} stated that applications for permission to drill should be filed at least 30 days in advance of the contemplated starting date of drilling activities, here June 30, but that Smoot's application was filed on June 6, less than 30 days in advance. The DE notified BLM that he had been unable to process Smoot's application, and that he had returned it to Denbe as "not approved" because it was not timely. The DE concluded that there were no diligent drilling operations on the lease on June 30, 1977, as no such operations could be approved by him in the time allowed by the filing of Smoot's application. Additionally, the DE advised BLM that "it had also been determined that the lease had no bond coverage, as specified in 30 CFR 221.18, for the proposed activity."

^{1/} "NTL-6" is a document entitled "Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases" from the Conservation Division, GS, dated June 1, 1976.

On July 15, 1977, BLM notified Smoot that it was refunding the money submitted by him as advance rental for an eleventh year on lease U-3398, because the DE had advised it that there were no diligent drilling operations over the lease expiration date, June 30, 1977, so that he was not entitled to an extension under 43 CFR 3107.2-3. On July 20, 1977, Smoot filed a notice of appeal of this decision to this Board, which was docketed as IBLA 77-474.

On July 21, 1977, Smoot requested the DE to reconsider his decision that there were no diligent operations on the site on June 30, but this request was denied by the DE on July 26, 1977. On July 29, 1977, Smoot filed a notice of appeal of the DE's decision to the Director, GS, per 30 CFR Part 290. On January 31, 1978, the Director, GS, issued his decision, GS-96-O&G, affirming the DE. In this decision the Director did not affirm the DE's disapproval of the application as untimely filed, but ruled that the DE had nevertheless acted properly, as the application could not be approved because Smoot and Denbe had not posted bond, as required. On March 23, 1978, Smoot filed a notice of appeal of the Director's decision to this Board, which was docketed as IBLA 78-353.

Inasmuch as the correctness of BLM's decision that Smoot (appellant) was not entitled to an extension of lease U-3398 depends directly on whether GS was correct in concluding that there were no diligent operations on the lease on June 30, the expiration date, we have consolidated these two appeals.

[1] In support of his decision disapproving as untimely appellant's application for a permit to enter and deepen the Rosenblatt Federal Well No. 1, the DE cited Notice to Lessees and Operators of Federal and Indian Onshore Oil and Gas Leases (NTL-6), both in his memorandum to BLM and in a memorandum dated August 11, 1977, transmitting the matter to the Director, GS. NTL-6 advises lessees that applications for permits to drill "should" be submitted 30 days in advance of the contemplated starting date of any operation, and that, even with applications submitted prior to 30 days before the starting date, there could be no guarantee of approval because of administrative delay in processing the application. The DE disapproved appellant's application because it was filed only 24 days in advance of the expiration date, not far enough in advance to allow processing of it by his office.

Although it is uncertain when Smoot first notified the DE that he wished to drill, it appears clear that no formal application to drill was made until June 6, when Denbe filed a written request. Under 30 CFR 221.58, "[t]he lessee is responsible for receipt of the notice by the [DE] in ample time for proper consideration and action." Thus, an oil and gas lessee is not expressly required to request approval of a proposed drilling plan more than 30 days in advance of the expiration of his lease. Therefore, it is not clear that the DE properly disapproved appellant's application simply because Denbe's application was received less than 30 days in advance of the expiration date.

Appellant alleges that, prior to the processing of his application by the DE, he met with the DE and his representative to discuss his situation. He states that he discussed the impending expiration date of his lease with the DE himself in March 1977, and that the DE informed him that his application could be approved in sufficient time to allow drilling at the end of June, if all the requirements for such a permit were met. Appellant also states that he met with a Mr. Martin of the DE's office in May 1977 reviewed with him an application to deepen the well, and that Martin informed him that the application was in order.

If appellant's allegations are true, it is possible that he provided the DE adequate notice, albeit oral notice, in ample time for proper consideration and action, as 30 CFR 221.58 allows both a lessee's giving notice of intention to begin drilling work, and the DE's giving permission to proceed with this work orally in cases of emergency. During his oral discussions with the DE and his representative in March and May 1977, appellant may well have given the DE oral notice, as under this regulation, that he desired accelerated "emergency" processing of his application. Moreover, Martin's response that the application was "in order" might be properly regarded as granting permission to proceed. In other circumstances, it might be necessary to hold a hearing to inquire into exactly what transpired at these meetings, in order to see if appellant clearly indicated that he was requesting accelerated emergency treatment of his application, if the DE's representative actually orally granted permission to proceed, and if any such agreement was confirmed in writing, as required.

[2] However, it is unnecessary to do so here, as, even assuming the truth of appellant's allegations, he would not prevail. Accordingly, the request for a hearing is denied. Both the DE and BLM have indicated that their records show that appellant and Denbe, his operator on the lease, failed to post a drilling bond, as expressly required by 30 CFR 221.18 and 43 CFR 3104, before drilling operations could begin. Appellant has explained his own failure to post a bond by noting that he checked with his insurance company, which advised him that Denbe "had two million dollars nationwide coverage, and that the drilling contract had a nationwide bond to drill anywhere." If this were so, and if Denbe had posted this bond with BLM, appellant might have been in compliance with the regulations. See 43 CFR 3104.3(b). However, the record indicates otherwise. The Director, GS, noted in his decision, that "the Utah State Office of the Bureau of Land Management advised that appellant did not have statewide or nationwide bond coverage for oil and gas leasing, and that no bond coverage had been found for Denbe Investment Company." (Emphasis supplied.) Appellant has not controverted this finding on appeal to this Board. Accordingly, we conclude that neither he nor his operator posted bond for this drilling activity, as required by 30 CFR 221.18 and 43 CFR Subpart 3104.

[3] Where a lessee fails to take all actions required by regulation before drilling operations may begin, any drilling actually undertaken by him does not constitute "diligent prosecution" of "actual drilling operations" in good faith under 43 CFR 3107.2-3, and he is therefore not entitled to an extension of his oil and gas lease. Daisy E. Hook, 21 IBLA 147, 148 (1975). Where a lessee is required by regulation to post bond before commencing drilling operations and fails to do so, it would be contrary to public policy to reward the lessee's violation by holding that the lease was extended by drilling operations undertaken without regard to this requirement. Ibid.

Appellant maintains that he relied to his detriment on a misrepresentation by a representative of the DE's office in May 1977 that the application for a permit to deepen the well was complete, despite the failure to have posted bond. Appellant notes that "no mention was made by GS of a drilling bond at that time, despite the fact that the application could not be approved without one. As a result, appellant did not obtain a drilling bond." ^{2/} The alleged failure of the DE's representative to inform appellant of his duty to post bond does not vitiate the authority of the Government to enforce this requirement. 43 CFR 1810.3(a). Moreover, reliance upon any information provided by a Department employee cannot operate to vest any right where the person asserting the right is not authorized by law to receive it. 43 CFR 1810.3(c). In any event, appellant should have known of his responsibility to post bond before beginning drilling operations. This requirement is stated in the regulations governing both GS and BLM, and is set out clearly in section 2 of the lease terms. It was not up to GS to inform appellant of every requirement for receiving an extension, and, in view of the availability to appellant of notice of this requirement, it works no injustice to require that he accept the consequences of failing to meet it.

[4] Nor is appellant benefited by BLM's having processed his check submitted in purported payment of eleventh year annual rental. It is established that, by cashing an advance annual rental payment check and placing funds in an unearned account, BLM does not waive its right to declare the lease invalid. Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976).

We conclude that the Director, GS, properly held that appellant's and Denbe's joint failure to post bond on or before June 30, 1977, the expiration date of the lease, barred the DE from approving his application for a permit to enter and deepen the Rosenblatt Federal No. 1 Well

^{2/} This explanation is at odds with appellant's assertion, quoted supra, that he was incorrectly advised by his insurance agent that Denbe had posted bond. Here, appellant asserts instead that he relied on the DE's failure to inform him of his duty to post bond.

on lease U-3398. We also affirm BLM's decision notifying appellant that he was not entitled to an extension of this lease, as he was not in good faith diligently prosecuting actual drilling operations as of June 30, 1977, the expiration date of the lease. In view of our holding here, it is unnecessary to determine whether and to what extent appellant was engaged in drilling operations on June 30, 1977, and thereafter.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Douglas B. Henriques
Administrative Judge

